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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 125-01 (PKC)

5 GABRIEL AGUIRRE CUERO,

6 Defendant.

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7  
8 New York, N.Y.  
9 January 20, 2017  
12:30 p.m.

10 Before:

11 HON. KEVIN P. CASTEL,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the  
Southern District of New York

16 EMIL J. BOVE

Assistant United States Attorney

17 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

18 AMY GALLICCHIO

19  
20 Also present: Ana Toro-Greiner, Spanish language interpreter  
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(In open court; case called)

THE COURT: Now, Ms. Gallicchio, the first order of business is I am going to go through the materials I have, and the question will be whether I have what I should have. I have a presentence report, recommendation, and addendum transmitted by Probation on January 4th. That is also the date that the report was revised. I have a letter from the government dated January 17th, 2017. I have a memorandum from you, which is dated January 6th and hopefully annexes a number of exhibits both regarding health and family letters and letters of support for the defendant.

Do I have everything I should have on the subject of sentence?

MS. GALLICCHIO: Yes, your Honor, you do.

THE COURT: Has the defendant read, reviewed and discussed with you the presentence report, recommendation and addendum?

MS. GALLICCHIO: Yes, your Honor, he has.

THE COURT: Does the defendant have any objections to the facts set forth in the presentence report?

MS. GALLICCHIO: No, your Honor.

THE COURT: Does the defendant have any objections to the guidelines calculation set forth in the presentence report?

MS. GALLICCHIO: Well, your Honor, as I think Mr. Bove had pointed out in his letter to the Court, the guidelines that

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1 the Probation had calculated is a different guideline range  
2 than that which was agreed upon in our plea agreement. So with  
3 respect to that, we would be asking the Court to abide by the  
4 guideline range as agreed upon in the plea agreement.

5 THE COURT: Well, I understand there are two different  
6 arguments that you are free to make. I just need to understand  
7 which one it is. One argument is that the guidelines range in  
8 the presentence report was erroneously calculated should not be  
9 adopted as the guideline range in this case. The other is a  
10 different argument that while Probation may have correctly  
11 calculated the guideline range, you asked the Court to take  
12 note of the fact that the presentence report -- not the  
13 presentence report, the plea agreement contemplated a different  
14 range and that you asked the Court to vary from the guidelines  
15 to honor the range in the plea agreement.

16 Please tell me what you're arguing.

17 MS. GALLICCHIO: It is the latter.

18 THE COURT: So you do not urge that the guidelines are  
19 erroneously calculated in the presentence report?

20 MS. GALLICCHIO: That's correct, your Honor.

21 THE COURT: Just to help me out, I see the stipulated  
22 guidelines had the defendant in criminal history category two,  
23 but I don't know what everybody had in mind -- why they thought  
24 it was criminal history category two and why Probation thought  
25 it was criminal history category three.

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Mr. Bove, can and enlighten me on that?

MR. BOVE: Yes, your Honor. From the perspective of the government in making the plea offer and the plea proposal, the difference resulted from a factually erroneous understanding on the part of the government about whether the defendant was subject to a term of supervised release based on that conviction in Florida at the time of the offense conduct in this case. It was the government's impression at the time of the plea offer that he was not. As the Probation Office has pointed out, the government was incorrect in that regard.

THE COURT: Does defense counsel agree with that?

MS. GALLICCHIO: Yes, your Honor, I do.

THE COURT: Does the government have any objection to the facts set forth in the presentence report?

MR. BOVE: No, your Honor.

THE COURT: Does the government have any objections to the guideline calculation in the presentence report?

MR. BOVE: No, your Honor.

THE COURT: I adopt as my findings of fact the facts set forth in the presentence report. Further, I find that the guidelines were correctly calculated, the defendant is in total offense level 33, criminal history category three.

I will now give defense counsel an opportunity to speak on behalf of the defendant.

MS. GALLICCHIO: Thank you, your Honor.

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1           Your Honor, I am asking you to impose the mandatory  
2 minimum sentence. As I laid out obviously in my sentencing  
3 submission, I am asking you to impose the mandatory minimum of  
4 five years followed by supervised release. As I laid out in my  
5 submission and I will address today, I do believe that it is  
6 sufficient and a substantial amount of incarceration in light  
7 of all the circumstances.

8           I want to begin with, however, making a couple of  
9 things clear that the government seems to question in its  
10 letter in response to our submission. The first is that the  
11 government suggests that Mr. Cuero fails to fully accept  
12 responsibility for his actions and the government seems to  
13 reach that conclusion based on a phrase that is used in my  
14 sentencing submission, that Mr. Cuero, desperate at the time  
15 that he committed this offense, was powerless to refuse.

16           THE COURT: I didn't pick it up in the government's  
17 letter first. I picked it up when I read your review. I have  
18 that sentence highlighted. I had a similar reaction.

19           MS. GALLICCHIO: Yes. So I think that perhaps your  
20 Honor and the government misunderstood the sentiment of that  
21 phrase. I wasn't in any way suggesting that he did not  
22 exercise under free will nor did he not have the intent to  
23 commit this offense. It was more of a general sense of the  
24 desperation of his situation and it was a term of art. So I  
25 hope the Court would understand and certainly the government

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1 that certainly he accepts full responsibility. The very next  
2 line in my sentencing submission after I do use that phrase I  
3 write, "He knows how wrong his choice was and how grave a  
4 situation is and that he expects to be punished." So I want to  
5 make that very clear that this gentleman has always accepted  
6 responsibility from the first day that I met him. In case  
7 there is any question to that, I hope that satisfies the Court.

8 The government also suggests that Mr. Cuero questions  
9 my suggestion that he committed this crime under economic  
10 duress and they suggest that that is strained at best in light  
11 of his prior arrest and his admission in 2007 to have been  
12 involved in prior refueling operations. They also suggest  
13 following his release in 2012 from the United States custody,  
14 he should have or could have relocated to some other city in  
15 Colombia or some other country in South America or Central  
16 American, and in that way somehow avoid being in an economic  
17 situation, which would compel him to commit such an offense. I  
18 would suggest to the Court that that demonstrates a lack of  
19 understanding of the economic conditions in Colombia,  
20 particularly in Buenaventura where Mr. Cuero is from.

21 THE COURT: How did economic conditions impact his  
22 decision to engage in the prior acts of drug trafficking for  
23 which he was sentenced? Were they a factor there?

24 MS. GALLICCHIO: They were a factor there as well,  
25 yes.

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1 THE COURT: Would it be true for the vast majority,  
2 not all but the vast majority, of those engaged in drug  
3 trafficking one the motivating factors is that it is a more  
4 attractive means of earning money than other options available  
5 to them?

6 MS. GALLICCHIO: I would say that perhaps that is the  
7 case for many people. This is not the life that Mr. Cuero has  
8 led. He is not a person who hasn't worked hard his entire  
9 life. He is man who at the age of 10 years old was fishing at  
10 night and going to school in the morning. He is a man when his  
11 costal down was devastated by a tsunami and his family  
12 relocated to the mountains where he spent years doing hard  
13 labor, cutting wood and transporting lumber down the mountain.  
14 He is a man in reaching his 20s relocated to the city of  
15 Buenaventura and involves himself in the fishing industry, a  
16 commercial and local fishing industry.

17 So this is not a man who has led a life in which he  
18 has chosen a more attractive path. He has worked hard. He is  
19 a humble man. His involvement in both the matter in 2007 and  
20 now came at a time when he was suffering. His family was  
21 suffering economically and at the time found it difficult to  
22 have another way out to support his family.

23 So to suggest that he could have relocated and he  
24 could have moved to another place really shows a lack of  
25 understanding of his economic situation. He returned to

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Colombia no better than he left. He did not have the economic means by which to relocate his entire family. I think that that demonstrates his actual economic situation and how dire it was, the fact that this man could not move from a deplorable situation.

I suggest to the Court also, and I refer to it in my sentencing submission, your Honor, to various links and articles, particularly the Human Rights Watch link, which does discuss in great detail the conditions in particularly Buenaventura, Colombia, where Mr. Cuero is from. As I noted in my submission, the 2003 census noted that 80 percent of the population lived in poverty. In 2011 the unemployment rate was 40 percent, which is twice the amount than it was in any other part of the country. Hundreds of people have been killed there, not only killed but dismembered. It is a city that is ravaged by paramilitary groups, drug organizations, and many more people have disappeared. Those who can relocate, have relocated. Mr. Aguirre Cuero and his family cannot.

As I said in my submission, men like Mr. Aguirre Cuero, who are poor fishermen, they are compelled by poverty and are at the lowest level of the totem pole of any drug organization I would suggest. I would suggest also that they are exploited and placed in the greatest danger, not just of getting arrested but certainly of losing their lives because they are powerless. Certainly there is no suggestion of this



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1 of Mr. Cuero that they manufactured cocaine, they package  
2 cocaine, they load up these large vessels. He is not living in  
3 a palace in the lap of luxury driving expensive cars and  
4 wearing expensive clothes and fine jewelry. That is just not  
5 who he is and where he stands in the scheme of a  
6 drug-trafficking organization. I take issue somewhat with  
7 categorizing him as a member of a drug-trafficking  
8 organization. Certainly he involved himself with a  
9 drug-trafficking organization, but his level of involvement is  
10 as I said the lowest level there can be.

11 I know that the government made some suggestion that  
12 because some leader in the drug-trafficking organization hired  
13 a lawyer to represent Mr. Cuero and the two other defendants --  
14 two other crew members and now defendants who have been  
15 arrested in this case suggests perhaps that he had some more of  
16 a role or involvement or membership in this drug-trafficking  
17 organization, but I find it hard to accept the logic of that  
18 argument. I think is more likely certainly that attorneys are  
19 hired to keep these people quiet. Certainly he didn't have the  
20 best lawyers. Nothing happened. He didn't receive great  
21 representation. He wasn't released from prison. He is here in  
22 the United States. So I don't believe there is any other  
23 suggestion, any other evidence this gentleman was a target of  
24 surveillance or any other involvement in this drug-trafficking  
25 organization than his involvement in this particular case.

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1           So I ask your Honor to imagine how hard life must be  
2 to be willing to board a boat, a go-fast boat with three other  
3 crew members -- two other crew members with very little  
4 supplies and to set out on the high seas knowing the risks and  
5 knowing the dangers, particularly when he has done it before,  
6 that things have to be pretty bad. In fact, they were for Mr.  
7 Cuero. When you have to borrow money from your neighbors, when  
8 you have to borrow water from your neighbors to drink and to  
9 wash with, when your children are hungry, when you cannot send  
10 them to school, when you have no electricity, things are  
11 desperate and people do desperate things and that is where he  
12 found himself in 2015.

13           This is not to say that he should not be punished, and  
14 I am not by my means suggesting that, and he accepts that he  
15 should be punished. The guidelines sentence, the one that was  
16 negotiated in the plea agreement or the one that the Department  
17 of Probation has correctly calculated is excessive under all  
18 the circumstances. We're talking about at the low end of the  
19 guideline range a 168 months. That is 14 years. These are not  
20 just numbers. That is a long time. Of course I understand the  
21 concerns that the Court must have that Mr. Cuero has a prior  
22 conviction for a similar offense, rightfully so, and the fact  
23 that as the government pointed out in its submission that he  
24 initially received a sentence of 135 months, which was later  
25 reduced on a Rule 35 motion to 70 months; but I would suggest

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1 to the Court that that sentence that he received in the Middle  
2 District of Florida should not be the guidepost here.

3 In my discussions with other attorneys in the Southern  
4 District and research into prior sentences in the Southern  
5 District reveals that first offenders like Mr. Aguirre Cuero  
6 was when he was sentenced in Florida do not receive sentences  
7 event close to what he received in Florida. All of the cases  
8 that I looked at had sentencing guidelines in the range of 168  
9 to 210, for example.

10 THE COURT: What was the quantity of drugs that were  
11 at issue in the case in the Southern District of Florida? What  
12 was the quantity?

13 MS. GALLICCHIO: I believe it was 2,500 kilos.

14 THE COURT: Now, when you looked at cases involving  
15 first offenders, how many of those cases had a quantity north  
16 of, let's say, a thousand kilos of cocaine?

17 MS. GALLICCHIO: Your Honor, there were none north of  
18 a thousand.

19 THE COURT: All right.

20 MS. GALLICCHIO: There were several 680 kilos,  
21 630 kilos. I agree, however --

22 THE COURT: No. No. Listen.

23 MS. GALLICCHIO: I understand your point, your Honor.

24 THE COURT: And I understand yours as well.

25 Go ahead.

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1 MS. GALLICCHIO: So I am not saying that he shouldn't  
2 receive what others have received here. What I am suggesting  
3 is that it is not the type of sentences first offenders  
4 regardless of the quantity on a go fast boat are receiving in  
5 the Southern District. I would ask your Honor to take that  
6 into consideration therefore would ask you not to be compelled  
7 to use that as a guidepost and to impose a sentence greater  
8 than that for which was last imposed, which I understand is a  
9 consideration for the Court.

10 THE COURT: Your argument was if he were sentenced in  
11 this district for 2,000 kilograms of cocaine, if he was  
12 criminally responsible as part of the conspiracy, you would  
13 expect that a judge in this district would not have given him  
14 135 months; is that what you are arguing?

15 MS. GALLICCHIO: I am saying there is certainly based  
16 on what I have seen and what I have learned from others that I  
17 have spoken to, other attorneys, that that is not the general  
18 practice, that a guideline sentence is imposed under those  
19 circumstances for a first offender.

20 THE COURT: If I tap somebody on the shoulder or went  
21 to the judge's lunch room and I said, Let me ask you a  
22 question. The conspiracy to distribute cocaine, have you ever  
23 heard of a first offender getting 135 months? Probably  
24 everyone around lunch table would say, No, I can't really think  
25 of any offhand. Then I could walk out of the lunch room and

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1 finish and go back to work. But if I turned around and I  
2 recast that as, Are you surprised that somebody who is  
3 responsible for participation in a distribution of over  
4 2,000 kilos of cocaine got a sentence of about 11 years, I  
5 think people would say, Not in the slightest. It depends on  
6 how you cast the question.

7 MS. GALLICCHIO: I understand that, your Honor. We're  
8 not talking about someone who was in charge of an organization.  
9 We're not talking about someone who --

10 THE COURT: No leadership enhancement.

11 MS. GALLICCHIO: Right. We're talking about the  
12 circumstances of that case. That boat could have contained  
13 300 kilos, 5,000 kilos. I think that the fact of that type of  
14 case -- I am talking about a specific type of case -- where  
15 most of these cases involve people who are of very little  
16 means, who are living in poverty, who are manning and asking to  
17 man these boats to make 5,000, \$10,000, which is a fortune to  
18 many of those people.

19 So I understand the quantity sounds like a lot and it  
20 is. Those numbers are huge. I think based on the nature and  
21 circumstances and the type of case and the type of people that  
22 courts see in front of them, under these circumstances I  
23 wouldn't certainly hope that a court would take that into  
24 consideration and not impose the grave penalty they could  
25 possibly impose on someone under those circumstances.

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1 THE COURT: In the case in the Southern District of  
2 Florida was that a single boat trip?

3 MS. GALLICCHIO: Yes. That's my understanding based  
4 on the materials I have received.

5 THE COURT: I understood that he cooperated and when  
6 he cooperated, I thought I read that it was a number -- well,  
7 here. He subsequently admitted to having participated in 15 to  
8 20 maritime drug-trafficking operations before 2007.

9 MS. GALLICCHIO: Right. My understanding is based on  
10 the documents that I have received and I've obtained that he  
11 pled guilty to one count of an indictment, which did not  
12 address other offenses.

13 THE COURT: For the record according to the  
14 government -- this is in the presentence report as well -- the  
15 amount of cocaine seized for the record was 2.8 tons.

16 MS. GALLICCHIO: 2,500 kilos.

17 THE COURT: Right.

18 MS. GALLICCHIO: It sounds more in tons, but it is the  
19 same quantity.

20 THE COURT: I realize that.

21 MS. GALLICCHIO: So I know this is an uphill battle.  
22 I understand. All I am asking is that you put this in  
23 perspective and consider the nature of the type of offense that  
24 we're talking about and obviously the nature of the man who is  
25 in front of you. A sentence of five years in my opinion is a

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1 substantial sentence. I am not asking for leniency. I am not  
2 asking for leniency in my submission. I wouldn't really  
3 consider that lenient. It is our position that it is  
4 sufficient given the factors of 3553(a).

5 I would also ask your Honor to consider significant  
6 and relevant the conditions of confinement that Mr. Cuero has  
7 already received. The government suggests somehow that Mr.  
8 Cuero should have known these conditions of confinement in  
9 Colombia and would make them less relevant. I would reject  
10 that argument and, also point out that Mr. Cuero has never been  
11 in a Colombian prison prior to his arrest in this case. When  
12 he was arrested previously, he was arrested on the Pacific  
13 Ocean and he was transported to the United States, not via a  
14 Colombian prison.

15 This man was in one the worst prisons in Colombia.  
16 There are plenty of resources available to support that  
17 position. I provided some links to the Court and some  
18 documentation to the Court. The conditions are inhumane by  
19 anyone's standards. There was lack of sunlight, heat,  
20 electricity, running and clean water, infections, diseases,  
21 respiratory and stomach disorders. There was very little to no  
22 medical treatment.

23 As I pointed out, the inmates, extraditables there,  
24 were required to carry large trays of food to their units on a  
25 rotating basis. On one occasion when Mr. Cuero was required to

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1 do that, he slipped and he fell down a flight of stairs landing  
2 directly on his right wrist. He fractured his wrist and he  
3 received no medical treatment. He was taken to the clinic.  
4 There was no doctor. He was forced to have treatment by a  
5 fellow inmate who happened to be a medical doctor who set his  
6 wrist. He put a splint on it. To this day he has received no  
7 medical treatment. The Court can see the deformity in his  
8 wrist if Mr. Cuero could show his bone. He has a fracture and  
9 a permanent deformity and constant pain. He still can use his  
10 hand, but it is a lot of difficulty doing menial tasks.

11 So as hard as prison life is in the United States,  
12 those conditions would never be tolerated here and no one does  
13 time like that in the United States. His time here will also  
14 be hard obviously. He will be thousands of miles away from his  
15 family. As you can see there is no one in the courtroom for  
16 him. He will not have a visitor no matter how long he stays in  
17 jail. His family has no economic means nor probably any  
18 ability and none will be permitted to visit the United States.  
19 So his prison conditions will be harsh and have been harsh. I  
20 ask your Honor to consider that when imposing your sentence.

21 This gentleman is a good man. He is a humble man by  
22 everyone's report. He is a God-fearing man. He has worked all  
23 of his life, from fishing villages when he was a child,  
24 sacrificing his education after only three years so that he  
25 could work to support his family in the logging business. From



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1 fishing to logging in the mountains and then back to the city  
2 to his fishing roots. He asks for your consideration of his  
3 life circumstances, your consideration of his offense conduct,  
4 and your trust that he knows, he is well aware, that this is  
5 the end of the road for him.

6 He has a family that loves him as your Honor saw in  
7 the letters of support and promises to him get legitimate  
8 employment when he returns. His children are in school. His  
9 daughter is I believe graduating. They are trying to find  
10 their own way, getting employment, and they will help him and  
11 support him.

12 Based on all that and everything we have written to  
13 the Court, we ask that you impose a sentence of five years.

14 THE COURT: Thank you very much.

15 Mr. Cuero, this is your opportunity to speak, to  
16 address the Court directly, to bring to my attention any facts  
17 or circumstances that you believe I should take account of in  
18 passing sentence upon you today. If there is anything you wish  
19 to say, this is the time to say it.

20 THE DEFENDANT: First of all, your Honor, God bless  
21 you.

22 I want to apologize for what I did. Truly I did it  
23 out of need. I didn't have a way to survive and when I saw my  
24 family suffering -- I didn't have electricity in my home  
25 because it had been cut off, I had no water, I owed money, I

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1 had no means to pay back. Every day someone would come home  
2 trying to get paid for it and I could see I was unable to find  
3 work. Then the need forced me to do that or drove me to do  
4 that. I promise you I will never ever again do something like  
5 that because -- because actually that would hurt me and it will  
6 hurt my family as well and I don't want to spend the rest of my  
7 life in prison. I want you to have mercy and I will never do  
8 this again. God bless you.

9 THE COURT: Thank you, Mr. Cuero.

10 This is the government's opportunity to speak.

11 MR. BOVE: Thank you, your Honor.

12 There are three points I want to make and I will try  
13 to make them briefly. The first is that I want to be  
14 unambiguous we're abiding by the plea agreement and consenting  
15 to this variance argument that related to the guideline range  
16 in the plea agreement of 151 to 188 months.

17 The second point I want to make --

18 THE COURT: What would be the basis for the variance?

19 MR. BOVE: I think that a number of arguments --

20 THE COURT: The fact that the plea agreement has the  
21 155 months, is that a basis to vary?

22 MR. BOVE: Not in and of itself, but I think there are  
23 other arguments that have been presented that could support a  
24 variance today.

25 The second point that I would want to make is that

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1 just because this defendant was involved in the transportation  
2 component of a drug-trafficking operation does not mean that he  
3 is the lowest level member of this organization, the  
4 organization that he did in fact work for. This is not a  
5 courier. This is someone who was entrusted in this case with  
6 350 kilos and as your Honor pointed out earlier previously  
7 trusted with over 2 tons of cocaine. The economic value of  
8 those drugs demonstrates that the people who provided them to  
9 him trusted him enough to get him to the place where they  
10 wanted it brought. This is not somebody akin to a courier  
11 transporting a kilo within the city from Point A to Point B.  
12 This is a trusted member of an organization and that is borne  
13 out by the fact that he tried to hire counsel for him in  
14 Colombia. It was not to make legal arguments. It was to pay  
15 bribes to get him out of jail.

16 The last point I want to make relates to the argument  
17 presented about the economic conditions where the defendant is  
18 from. I struggle with that, to really process that in the  
19 context of a proceeding like this for a defendant who has been  
20 convicted previously, who as I hear him saying that he was  
21 powerless to refuse in light of the economic conditions where  
22 he is from the opportunity to earn money by engaging in drug  
23 trafficking. In the absence of an articulated plan for what is  
24 going to be different when this man returns, I think you are  
25 left in a position with the state of this record that supports

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1 a strong finding about the importance of deterrence, specific  
2 deterrence, because a sentence of 70 months was not enough the  
3 last time this happened to convince the defendant that this  
4 drug trafficking and supporting maritime drug-trafficking  
5 operations cannot be a way of life, cannot be a means of  
6 income. It wasn't enough last time.

7 Nothing has been said to address the question of what  
8 would be different upon release after completion of his  
9 sentence in this case. Both with respect to specific  
10 deterrence for this defendant as well as general deterrence so  
11 that when the defendant returns to Colombia and explains his  
12 experience, people can start to think, I submit, more  
13 rationally based on the penalties imposed about whether this is  
14 viably a way of life down in Colombia, trafficking in drugs  
15 that ultimately end up here in the United States as poison. I  
16 think that indisputably there are some things that are  
17 mitigating here that have been described that at the end of the  
18 day that deterrence -- the need for the deterrence in this  
19 sentencing is very powerful in light of the lack of an  
20 articulated plan for why it would be any different for this man  
21 to make a living when he returns, and that is what leads me at  
22 the end of the day advocating to your Honor for a guideline  
23 sentence.

24 THE COURT: Thank you, Mr. Bove.

25 This is the Court's statement of reasons for the

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1 sentence to be imposed on Gabriel Aguirre Cuero:

2 In sentencing the defendant, I have considered all the  
3 materials that I referenced at the outset of this proceeding  
4 and I have considered the very thoughtful presentation by Ms.  
5 Gallicchio today. I think it was very fine advocacy and  
6 difficult advocacy and I compliment her on the fine job she  
7 did. I also took the defendant's statement as very sincere. I  
8 have considered each of the factors under Section 3553(a). I  
9 need not recount all that I have considered, but I have  
10 considered it all. I will comment on some of them.

11 The defendant during the period January and February  
12 of 2015 participated as a member or associate of a  
13 drug-trafficking organization that transported multi-kilogram  
14 quantities of cocaine from Colombia to the United States on the  
15 seas. Defendant, with two others, participated in a shipment  
16 of 350 kilograms of cocaine operating a flagless vessel  
17 carrying the cocaine furnished by the drug-trafficking  
18 organization. The Colombian Navy located and intercepted the  
19 vessel in international waters and it was flying no flag of any  
20 country. They found the cocaine, and the United States assumed  
21 jurisdiction over the vessel and the crew.

22 In the plea agreement the defendant acknowledges being  
23 responsible for between 150 and 450 kilograms of cocaine. He  
24 was previously convicted in the Southern District of Florida of  
25 conspiracy to possess with intent to distribute 5 kilograms or

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1 more of cocaine while aboard a vessel subject to the  
2 jurisdiction of the United States. It wasn't in fact merely  
3 5 kilograms but 2,800 kilograms for which the defendant was  
4 responsible, and he admitted that he had participated in  
5 between 15 and 20 refueling operations of cocaine smuggling  
6 vessels in the past.

7 The defendant is 53 years of age and comes from a very  
8 poor area of Colombia. He has various medical conditions. He  
9 is taking medication for high cholesterol, like a lot of  
10 people, and he has an unspecified eye condition in addition to  
11 the fracture and dislocation of his wrist. His sentence of 135  
12 months in the Southern District of Florida was reduced because  
13 of substantial assistance. He was on five years' supervised  
14 release. He was released in 2012. Again, this offense took  
15 place in early 2015.

16 I see nothing unusual about the sentence originally  
17 imposed in the Southern District of Florida. I keep calling it  
18 the Southern District of Florida. It wasn't it was the Middle  
19 District. It was in Tampa. I stand corrected. My repeated  
20 references to Southern District to Florida should have been  
21 Middle District of Florida.

22 This man was indifferent to the poison that was being  
23 distributed and ruining people's lives. It is absolutely true  
24 that this defendant has a proven record of being industrious.  
25 I believe he is industrious, he is smart, he is reliable, and

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1 he is trustworthy. That is why he would be trusted with the  
2 quantities of cocaine that he was. These are the attributes  
3 that would make him an attractive person to be engaged either  
4 as an independent contractor or otherwise by a drug-trafficking  
5 organization. A rational drug trafficker is not going to  
6 utilize someone who is lazy, stupid, unreliable, and not to be  
7 trusted.

8 I think the arguments of economic necessity do prove  
9 too much. I understand now if caught again he would face a  
10 much longer period in prison. Well, people who engage in drug  
11 trafficking on the seas generally don't get caught. The odds  
12 of escaping interdiction are high. The plan in engaging would  
13 not be, Let me engage in this, get caught and spend the rest of  
14 my life in prison. The plan would be, Let me engage in this  
15 and this time I am going to use a new methodology and new  
16 technology, a new route and avoid detection. He may be right  
17 about that. He may.

18 I have also heard that the family now would have the  
19 ability to help him.

20 Mr. Cuero got a break when a sentence was reduced down  
21 to 70 months. I am not saying it was inappropriate. It  
22 probably was appropriate. But he fully understood what the  
23 consequences of the actions are. Despite sincerity of the  
24 statements here today, I believe that there is a serious danger  
25 that if this man returned to his former home in 60 months, less

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1 any credit for time served, that he would again assist the  
2 drug-trafficking organization in one capacity or another and  
3 the message would be: The first time you get 70 months. The  
4 second time you get 60 months. Maybe if I am caught again, I  
5 will get 50 months. It may not be that Mr. Cuero would believe  
6 that but others hearing his tale would.

7 I take no joy or pleasure from the sad circumstances  
8 Mr. Cuero is in. I think it is sad to the government. It's  
9 sad to defense counsel. It is sad to Mr. Cuero and it is sad  
10 to me. I can't imagine what it is like having to do jail time  
11 in another country where you are cut off from your family. I  
12 think that is an awful situation.

13 Mr. Cuero did not go around shooting people, stabbing  
14 people, drawing blood; but he participated in an important way  
15 in the distribution of a substance, which creates misery in the  
16 lives of the people who use it.

17 There is an important value in general deterrence in a  
18 case such as this. There is also, as I have said, a need for  
19 specific deterrence of this individual. These are legitimate  
20 concerns under 3553(a). It is also appropriate to impose just  
21 punishment and promote respect for law. We have not discussed  
22 this, but Mr. Cuero could care less about the laws of the  
23 United States. Now, maybe I could understand that on his first  
24 go-around. I don't have the transcript of his sentencing, but  
25 it is a legitimate matter to wonder whether he said at his



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1 original sentencing that he was sorry and he would never do it  
2 again. I have heard no claim that he said to the judge, I have  
3 an open mind about whether I would do this again. I tend to  
4 doubt that.

5 As to the financial compensation, by his account it  
6 was \$10,000. I realize he was living in poor surroundings, but  
7 I suspect even in a wealthy country like the United States you  
8 get a fair number of takers who would undertake a dangerous and  
9 unlawful mission of shipping drugs for \$10,000, and \$10,000  
10 doesn't go as far here.

11 So I don't know what the right thing to do in Mr.  
12 Cuero's case, but I do know that it is necessary and  
13 appropriate to protect the public from further crimes of this  
14 man and also to deter others from engaging in this conduct.

15 I note that the sentencing range and the stipulated  
16 guideline range was 151 to 88 months and in the correct  
17 guideline range it is 168 to 210 months. There is a  
18 substantial overlap between the two guideline ranges.

19 Was the defendant charged or did he plead guilty to  
20 the full quantity or was he allowed to plead or indicted for an  
21 offense which reflected a lesser quantity?

22 MR. BOVE: In this case, your Honor?

23 THE COURT: Yes.

24 MR. BOVE: The quantity in the guidelines stipulation  
25 reflects the full quantity. He was permitted to plead guilty

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1 to an offense with a lesser statutory threshold relating to  
2 mandatory minimum.

3 THE COURT: He was charged with the offense that  
4 triggered a higher statutory mandatory minimum?

5 MR. BOVE: Yes, your Honor.

6 THE COURT: What was that mandatory minimum?

7 MR. BOVE: 10 years.

8 THE COURT: He was allowed to plead to a lesser  
9 offense?

10 MR. BOVE: Yes, your Honor.

11 THE COURT: That was the decision of the government?

12 MR. BOVE: Yes, your Honor.

13 THE COURT: Taking into account the period of time  
14 that the defendant spent prior to arriving in the U.S. custody,  
15 as I do, and the conditions under which he was held prior to  
16 arriving in U.S. custody, as well as other arguments advanced  
17 by the defendant, I conclude that a sentence of 144 months'  
18 imprisonment, lifetime supervised release, waiver of the fine,  
19 and imposition of the \$100 special assessment together with  
20 forfeiture is sufficient but not greater than necessary to  
21 achieve the purposes of Section 3553(a).

22 Does the defendant or his counsel have any objection  
23 to the Court's proposed sentence or the statement of reasons  
24 for that sentence?

25 MS. GALLICCHIO: No, your Honor.

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1 THE COURT: Does the government have any objection?

2 MR. BOVE: No, your Honor.

3 THE COURT: Defendant will please stand and the Court  
4 will impose sentence.

5 Gabriel Aguirre Cuero, you are hereby sentenced to the  
6 custody of the United States Bureau of Prisons to be imprisoned  
7 for 144 months. Following release from imprisonment, you shall  
8 be placed on supervised release for the rest of your natural  
9 life with the following terms and conditions: You shall not  
10 commit another federal, state or local crime nor illegally  
11 possess a controlled substance nor possess a firearm or  
12 destructive device. You shall refrain from any unlawful use of  
13 a controlled substance and submit to one drug test within 15  
14 days of placement of supervised release and at least two  
15 unscheduled drug tests thereafter. You shall cooperate in the  
16 collection of DNA as directed by probation.

17 The standard conditions of supervision 1 through 13  
18 are imposed with the following special conditions. You shall  
19 submit your person, residence, place of business, vehicle, or  
20 any other premises or electronic devices under your control to  
21 a search on the basis that the Probation officer has reasonable  
22 belief of that contraband or evidence of the condition of a  
23 violation of conditions of release may be found. The search  
24 must be conducted at a reasonable time and in a reasonable  
25 manner. Failure to submit may be grounds for revocation. You

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1 shall inform any other residence that the premises may be  
2 subject to search pursuant to this condition.

3 You shall obey the immigration laws of the United  
4 States and comply with the directives of immigration  
5 authorities.

6 If you are ever at liberty in this country, which I  
7 doubt very much, you shall report to a Probation Office within  
8 72 hours.

9 It is further ordered that you shall pay to the United  
10 States a special assessment of \$100, which be shall be due  
11 immediately. Based on limited assets, limited earning ability,  
12 the fine is waived.

13 You shall forfeit to the United States any and all  
14 property used or intended to be used in connection with the  
15 offense to which you entered a plea of guilty.

16 Mr. Cuero, you have the right to appeal the sentence I  
17 have imposed on you. If you cannot afford the cost of an  
18 appeal, you may apply for leave to appeal as a poor person.  
19 The time limits for filing a notice of appeal are brief and  
20 they are strictly enforced. If you request the Clerk of Court  
21 will prepare and file a notice of appeal on your behalf.

22 Do you understand that, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: Please be seated.

25 Is there anything further from the government?

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1 MR. BOVE: Your Honor, I move to dismiss the  
2 underlying counts.

3 THE COURT: Any open counts are dismissed without  
4 objection.

5 Does the defense have anything further?

6 MS. GALLICCHIO: No, your Honor.

7 THE COURT: Mr. Cuero, I wish you a long and healthy  
8 life. I hope you do become reunited with your family. Until  
9 that happens, I hope that you maintain good communication with  
10 them by letter or otherwise. As I said before, it is a sad day  
11 for everyone. No one can be happy about the circumstance that  
12 you find yourself in. As a fellow human being, you have my  
13 sympathy in that regard; but I said what I said and I meant it  
14 all.

15 I wish you the best.

16 We're adjourned

17 -0-